

# **EXHIBIT A**

1 THE HONORABLE ROBERT J. BRYAN  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 STATE OF WASHINGTON,  
11 Plaintiff,  
12  
13 v.  
14 THE GEO GROUP, INC.,  
15 Defendant.  
16

17 Case No.: 3:17-cv-05806-RJB  
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20 DECLARATION OF TAE D. JOHNSON  
21 ASSISTANT DIRECTOR, CUSTODY  
22 MANAGEMENT DIVISION,  
23 ENFORCEMENT AND REMOVAL  
24 OPERATIONS (ERO) UNITED STATES  
25 IMMIGRATION AND CUSTOMS  
26 ENFORCEMENT (ICE) DEPARTMENT  
27 OF HOMELAND SECURITY (DHS)  
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30 I, Tae D. Johnson, make the following statement under oath subject to the penalty of perjury  
31 pursuant to the laws of the United States and the State of Washington:

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33 1. My name is Tae D. Johnson. I am competent to testify in these matters in that I am over the  
age of majority and I am familiar with the subjects discussed herein.  
2. I am a member of the Senior Executive Service serving as the Assistant Director, Custody  
Management Division, Enforcement and Removal Operations (ERO), U.S. Immigration and  
Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS), in Washington,  
D.C. I have held this position since January 2, 2011. My current work address is: 500 12th  
Street Southwest, Washington, D.C. 20536.

34 DECLARATION OF TAE JOHNSON  
35 ENFORCEMENT AND REMOVAL OPERATIONS  
36 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT  
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38 1 of 8

- 1       3. I hold a Bachelor of Science degree in accounting from Salisbury University in Salisbury,  
2       Maryland.
- 3       4. In 1992, I began my federal career in Salisbury, Maryland with the former Immigration and  
4       Naturalization Service (INS). For the past 20 years, I have served as a detention enforcement  
5       officer, a supervisory detention enforcement officer, a supervisory immigration enforcement  
6       agent and deportation officer with INS and ICE.
- 7       5. Since 2011, while at ICE headquarters, I have served as a Unit Chief of the detention standards  
8       compliance unit, as Chief of Staff for the Office of Detention Policy and Planning, as Special  
9       Assistant to the Assistant Secretary for ICE, and as Deputy Chief of Staff for the Executive  
10      Associate Director for ERO.
- 11      6. In my current position as Assistant Director, I oversee and direct the Custody Management  
12      Division, which provides policy and oversight for the administrative custody of more than  
13      41,000 detainees daily and roughly 375,000 detainees annually. The Custody Management  
14      Division oversees and manages ICE detention operations to provide for the safety, security and  
15      care of detainees in ICE custody. The ICE detention system consists of more than 250 local  
16      and state facilities operating under intergovernmental service agreements, contract detention  
17      facilities, ICE-owned facilities and facilities operated by the Bureau of Prisons.
- 18      7. ICE arranges for detention services through three primary types of arrangements. Service  
19      Processing Centers (SPCs) are government-owned facilities and are operated directly by ICE.  
20      Contract Detention Facilities (CDFs) are contractor-owned-and-operated facilities at which  
21      ICE has contracts with private services providers. Intergovernmental Service Agreements  
22      (IGSAs) are agreements between ICE and a state or political subdivision of a state, such as a  
23      local government. (8 U.S.C. §1103(11)(A)). Sometimes the state or political subdivision then  
24      enters into a subcontractor agreement for a private contractor to operate the facility.
- 25      8. Northwest Detention Center (NWDC) in Tacoma, Pierce County, Washington is a CDF, and  
26      is within my chain of authority. NWDC operates pursuant to a performance-based contract,  
27      which is a results-oriented method of contracting focused on outputs, quality, and outcomes.

32      DECLARATION OF TAE JOHNSON  
33      ENFORCEMENT AND REMOVAL OPERATIONS  
34      UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

1 Performance-based contracts do not designate *how* a contractor is to perform the work, but  
2 rather establishes the expected outcomes and results that the government expects. It is then the  
3 responsibility of the contractor to meet the government's requirements at the price the vendor  
4 quoted. The NWDC contract is also a firm-fixed price contract, which means that GEO  
5 responded to the government's requirements by quoting fully burdened rates (i.e. bed day rate,  
6 transportation rate, etc.) at which it would perform the requirements outlined in the contract's  
7 Performance Work Statement (PWS). When contracting for detention services in the Seattle  
8 Field Office region, ICE sought a firm-fixed price performance-based contract for a full-service  
9 facility that would provide the safe and secure detention, transportation, detention  
10 management, and ancillary services for up to 1,575 adult detainees.

12 9. I am aware that the State of Washington filed a lawsuit, *State v. GEO*, U.S. District Court  
13 Western District of Washington ECF Case No. 3:17-cv-05806-RJB, making certain wage-  
14 related claims against ICE's contractor, The GEO Group, INC. (GEO). I am also aware that  
15 in a related action, *Nwauzor v. GEO*, U.S. District Court Western District of Washington,  
16 ECF Case No. 3:17-cv-05806-RJB, ICE detainees filed a class action lawsuit against GEO  
17 alleging an entitlement to minimum wages for participating in the VWP.

20 10. Aliens whom ICE officers and agents arrest for civil immigration violations are those for  
21 whom ICE has probable cause to believe are removable from the United States.<sup>1</sup> When an  
22 individual is detained in ICE custody, ICE provides for their care and custody under the  
23 agency's detention standards. These standards provide for the health and welfare of ICE's  
24 detainees.<sup>2</sup> ICE ensures its custodial supervision obligations are met through a set of  
25 standards and inspections to ensure all types of its facilities implement and adhere to ICE's  
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30 <sup>1</sup> See generally 8 U.S.C. § 1357 (2018); see also, 8 U.S.C. § 1101(a)(3), "[t]he term "alien" means any person not a  
31 citizen or national of the United States."

<sup>2</sup> See, e.g., <https://www.ice.gov/factsheets/facilities-pbnds>

1 contractual requirements and detention standards. The agency's first set of national detention  
2 standards were originally issued in September 2000 to facilitate safe, secure, and humane  
3 conditions of confinement, access to legal representation and safe and secure operations  
4 across the detention system. The standards established consistency of program operations  
5 and management expectations, accountability for compliance and a culture of  
6 professionalism.

7 11. One of the many aspects of ICE's detention standards is the Voluntary Work Program.  
8 Among other purposes, the VWP enables detainees to receive an allowance of no less than  
9 \$1 per day that they can then save or spend on commissary items. The purpose of the  
10 Voluntary Work Program of the 2011 Performance-Based National Detention Standards  
11 (PBNDS)<sup>3</sup> is to provide detainees opportunities to work and earn money while detained,  
12 subject to the number of work opportunities available and within the constraints of the safety,  
13 security, and good order of the facility. The intent of the Voluntary Work Program is to  
14 reduce the negative impact of confinement through decreased idleness, improved detainee  
15 morale, and fewer disciplinary incidents. Money earned through the program also allows  
16 detainees to buy commissary goods, and pay for phone calls, etc.”

17 12. ICE administers the VWP in its own Services Processing Centers (“SPCs”) and according to  
18 the PBNDS. According to the NWDC contract with ICE, GEO should manage a detainee  
19 work program.<sup>4</sup> The contract states that Detainee labor shall be used in accordance with the  
20 detainee work plan developed by the Contractor, in this case GEO, and will adhere to the ICE  
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29 <sup>3</sup> The Performance-Based National Detention Standards (PBNDS) establishes consistent conditions of confinement,  
30 program operations, and management expectations to ensure a safe and secure a detention environment for staff and  
31 detainees in the ICE detention system.

32 <sup>4</sup> See ICE/GEO NWDC Contract.

1 PBNDS on the Voluntary Work Program.<sup>5</sup> The contract also states that “[d]etainee labor  
2 shall be used in accordance with the detainee work plan developed by the Contractor and will  
3 adhere to the ICE PBNDS on Voluntary Work Program. The detainee work plan must be  
4 voluntary, and may include work or program assignments for industrial, maintenance,  
5 custodial, services, or other jobs...Detainees shall not be used to perform the responsibilities  
6 or duties of an employee of the Contractor.”<sup>6</sup>

7  
8 13. Under a 1950 law codified at 8 U.S.C. § 1555(d), ICE is authorized to pay “allowances (at  
9 such rate as may be specified from time to time in the appropriation Act involved) to aliens,  
10 while held in custody under the immigration laws, for work performed.” The Agency receives  
11 an appropriation from which it can make these payments. The amount of the payments was  
12 most recently specified in the appropriations act for Fiscal Year 1979, which set it at a  
13 maximum of \$1 per day. Pub. L. No. 95-431. Congress set this rate in 1979 and has not  
14 adjusted it since. Per the terms of the contract, as well as the authority provided above, the  
15 reimbursement for the Voluntary Work Program is \$1.00 per day per detainee. The PNBDS  
16 also provides that detainees who participate in the VWP shall receive no less than \$1 per day  
17 for their participation. ICE reimburses GEO \$1 per day per detainee for the VWP, the  
18 amount to which GEO is entitled under the contract, and pursuant to the authority provided  
19 above. Per PBNDS, GEO then pays the detainee directly. This is the same rate that ICE  
20 provides to detainees in its own SPC facilities.

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22 14. The NWDC contract states “the contractor shall comply with all applicable federal, state, and  
23 local laws...”.<sup>7</sup> Additionally, within the VWP section of the NWDC contract, the contract

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30 <sup>5</sup> See *Id.*

31 <sup>6</sup> See *Id.*

32 <sup>7</sup> See *Id.*

1 states that "the detainee work program shall not conflict with any other requirements of the  
2 contract and must comply with all applicable laws and regulations."<sup>8</sup>  
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4 15. ICE involved stakeholders to develop its PBNDS. The workgroup relied upon national  
5 correction standards from the American Correctional Association ("ACA"). State and local  
6 jails similarly follow ACA standards.  
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8 16. PBNDS, including Standard 5.8 that describes the expected outcomes and practices of the  
9 VWP, reflect performance standards for ICE detention.  
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11 17. ICE audits NWDC for PBNDS compliance, including compliance with VWP objectives and  
12 protocols. ICE reports to Congress its efforts to implement and enforce PBNDS standards at  
13 NWDC and other facilities. ICE's enforcement of PBNDS has been a priority given ICE's  
14 commitment to the fair and humane treatment of ICE detainees.  
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16 18. ICE's series of detention standards apply to all types of ICE processing facilities. Regardless  
17 of which type of facility arrangement ICE selects, all detainees at all ICE facilities are at all  
18 times in the lawful custody of ICE. Accordingly, ICE relies on its contractors to perform in  
19 accord with contract requirements at contract facilities. At the NWDC, ICE occupies a  
20 significant portion of the facility unrelated to GEO's detention services to fulfill its  
21 operational objectives to include its federal immigration courts. ICE has unfettered access  
22 to the secure areas and the detainees. The NWDC is subject to DHS audits, third party  
23 inspections, and civil rights inspections. Detainees have access to hotlines Monday thru  
24 Friday during waking hours by which they can report complaints about VWP participation,  
25 other tasks assigned to them, or any other facility related grievances. ICE reviews and  
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31 <sup>8</sup> See *Id.*

1       resolves detainee complaints that ICE receives, according to its established procedures and  
2       protocols, which includes any complaints about the VWP or detainee work at the NWDC.  
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4       19. NWDC has implemented and conforms to current PBNDS. The PBNDS requires that  
5       detainees receive at least \$1.00 (USD) per day for work performed in the VWP.  
6

7       20. ICE employs a full-time detention services manager at NWDC whose primary responsibility  
8       is to ensure the facility is in compliance with the PBNDS requirements, including those  
9       related to the VWP.  
10

11       21. ICE also employs a contracting officer's representative ("COR") who works full-time at  
12       NWDC. The COR's primary duty is to monitor GEO's performance to ensure that all of the  
13       technical requirements under the contract are met by the delivery date or within the period of  
14       performance, and at the price or within the estimated cost stipulated in the contract.  
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16       22. With GEO's monthly invoice, GEO's Assistant Warden for Administration at the NWDC  
17       provides the COR an itemization of participants in the VWP, which includes detainee  
18       number, name, date of participation, work performed, and amount paid. The COR reviews  
19       this itemization and the corresponding totals of \$1.00 per day per participant. The COR  
20       verifies that the line item on the invoice matches the proper contract line item number for the  
21       VWP on the contract. If the supporting paperwork for the entire invoice meets ICE standards,  
22       the COR signs the invoice to approve payment.  
23

24       23. GEO may not otherwise expend the funds allocated for the reimbursement for the \$1 per day  
25       allowance for detainee participation in the VWP. If a detainee participates in the VWP, the  
26       \$1 per day allowance must be provided to the detainee. Per the PBNDS, the facility shall  
27       have an established system that ensures detainees receive the pay owed them before being  
28       transferred or released.  
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32       DECLARATION OF TAE JOHNSON  
33       ENFORCEMENT AND REMOVAL OPERATIONS  
                  UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

1 24. The NWDC contract set the quantity of \$1.00 reimbursements at 114,975 per option year.

2 GEO shall not exceed that quantity without prior approval by the contracting officer. This  
3 approval can be sought by GEO and would be memorialized through a bi-lateral contract  
4 modification.

5 25. The \$1.00 per day allocation and reimbursement rate for VWP participation is consistent with  
6 national detention standards applied similarly at state and local levels where ICE detainees  
7 often are placed.

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10 I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and  
11 correct to the best of my knowledge, information and belief.

12  
13 DATED: August 1, 2018



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15 TAE D. JOHNSON  
16 Assistant Director  
17 Custody Management Division  
18 Enforcement and Removal Operations  
19 U.S. Immigration and Customs Enforcement  
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UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT